

# Private Property and Public Access: A Possible Solution



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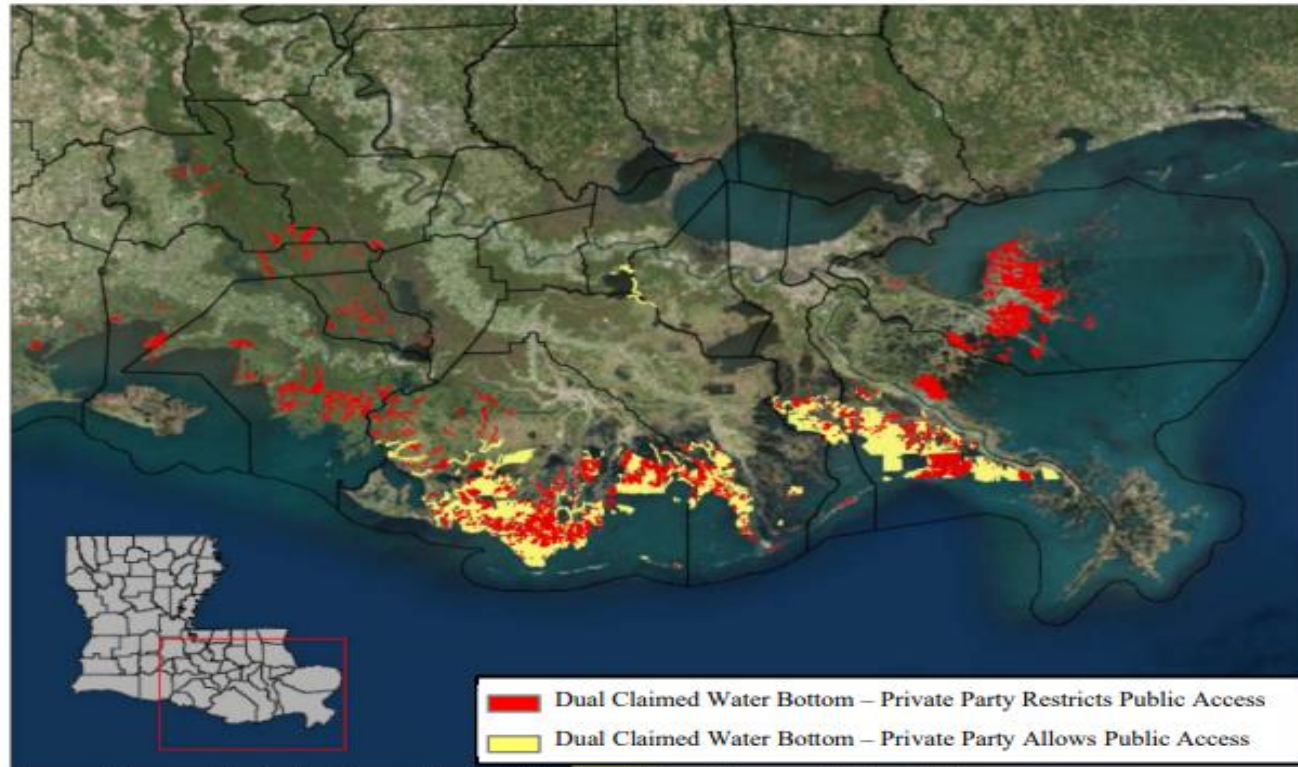


# The Problem of Dual Claimed Land

Inventory of State Lands

Office of State Lands

## Exhibit 2 Dual Claimed Water Bottoms in Southeastern Louisiana As of May 2018



Source: Prepared by legislative auditor's staff using information provided by OSL.

## How Did We Get Here?

- SCR 111 (2005 Regular Session) authorized the State Land Office to map State owned lands
- The State cannot alienate naturally navigable water bottoms, “except by the riparian owner to recover land lost through erosion.” 1974 Constitution, Art. IX, §3.
- SLO heavily relies on USGS topographic maps from the 1930s and “assume[s] those waterways depicted on the 1930s quadrangles were there in 1812”

# How Did We Get Here? Cont.'d

## Keeping it in Perspective

- Legislative Audit of State Land Office's Inventory of State Lands (Aug. 2018):
  - State claims ownership of **5,751,583 acres** of water bottoms
  - **286,467 acres (5%)** of these water bottoms are **dual claimed**
    - Landowners grant access to **194,525 acres (67.9%)** of the 286,467 dual claimed acres
    - Landowners only restrict access to **91,942 acres—or 1.5% of the total 5,751,583 acres** of water bottoms claimed by the State



## How Did We Get Here? Cont.'d

### Ownership Determinations

- Keep in mind:
  - For competing/conflicting claims, “ownership can only be decided by a court of law.”
  - State’s claim to own a “dual claimed” tract only creates a cloud on title; record ownership remains unchanged

# Recent Attempts to Address the Issues

## 2018 Sea Grant Study

- HR 178 (2017) – Louisiana Sea Grant’s study attempts to find common ground between the stakeholders, focusing on voluntary “public recreation servitudes.”
- Key Suggested Solutions:
  - Payments to landowners (public/private funds)
  - Limited liability to landowners
  - Tax incentives
  - Improved mapping

## Recent Attempts to Address the Issues, Cont.'d.

### House Bill 391 (Pearson) (2018 Regular Session) (Defeated)

- “No person may restrict or prohibit, pursuant to the authority of Civil Code Article 3413 or otherwise, the public navigation of running waters”.
- “‘running waters’ shall mean running waters as provided in Civil Code Article 450 and shall include waters passing over any **privately owned water bottom**”.
- *Buckskin Hunting Club v. Bayard*, 03-1428 (La. App. 3 Cir. 3/3/04); 868 So. 2d 266, 274: “The obligations arising from water being a public thing \* \* \* does not mandate that landowner allow public access to waterway.”
- Solutions such as HB 391 providing unfettered access to “running waters” are unworkable.



## Recent Attempts to Address the Issues, Cont.'d.

### Senate Concurrent Resolution 99 (2018 Regular Session)

- Created a Public Recreation Access Task Force
  - Stakeholders from all sides meet monthly until February 1, 2020 “to study the conditions, needs, and issues relative to potential public recreation access on the navigable waters of the state”
- SCR recognized :
  - “the coastal regions are subject to both public and private ownership, and due to **the constantly changing nature of the coastline**, many boundaries delineating the ownership of state and private properties have either disappeared or have become indistinguishable, particularly where property has become submerged”



# A Possible Solution

➤ **FACT:** Louisiana's coastline is ever changing.

The boundaries of our seashore, coastal waterbodies, swamp and overflowed lands, and interior waterways—be they lakes, rivers or streams—are not static and are constantly changing due to erosion, accretion, dereliction, subsidence, rising sea levels, *etc.*

# A Possible Solution, Cont'd.

## The Current Limitation

- Art. IX, § 3 of the Louisiana Constitution (1974):

The legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body, except for purposes of reclamation by the riparian owner to recover land lost through erosion. This Section shall not prevent the leasing of state lands or water bottoms for mineral or other purposes. Except as provided in this Section, the bed of a navigable water body may be reclaimed only for public use.



## A Possible Solution, Cont'd.

### A Constitutional Amendment

To allow the State, through the State Land Office, to alienate State “claimed” water bottoms by entering into voluntary boundary agreements with riparian landowners.

# A Possible Solution, Cont'd.

## Statutes and Regulations

- ▶ Statutes and regulations adopted to implement the constitutional authorization:
  - ▶ Voluntary participation.
  - ▶ Boundary determined based on original GLO maps or some other competent evidence of boundary at time of severance.
  - ▶ State bears burden of proving navigability in 1812 and at time of severance.
  - ▶ State and landowners relinquish their respective “claims” to land located on the opposite sides of the agreed boundary.

## A Possible Solution, Cont'd.

### Statutes and Regulations, Cont'd.

- ▶ Landowner grants limited, permanent, public right of use or servitude for recreational fishing access.
- ▶ Landowner receives tort Immunity for claims arising out of public's right of use occurring on water bottoms allocated to the landowner.
- ▶ Managed similar to wildlife management areas, and enforced by Wildlife & Fisheries.

# A Possible Solution, Cont'd.

## Benefits Almost All Stakeholders

- Addresses the issue of the constantly changing coast. Boundaries are permanently fixed regardless of future land loss or gain.
  - Will require amendments to Civil Code articles on seashore, erosion, accretion and dereliction.
- Public gets limited recreational fishing access to the privately owned lands.
- Landowners get tort immunity for allowing public recreational fishing access.
- Landowners and the State get stability of land and mineral titles.

# A Possible Solution, Cont'd.

## Benefits Almost All Stakeholders, Cont'd.

- Department of Wildlife & Fisheries receives revenue from access permits in exchange for management and enforcement.
- Department of Wildlife & Fisheries controls time and means of access.
- State Land Office provides definitive maps showing public and private boundaries.



## A Possible Solution, Cont'd.

### Benefits Almost All Stakeholders, Cont'd.

- Encourages Landowners to participate in CPRA and/or ACOE reclamation/restoration/shoreline stabilization projects.
- Partially eliminates need/problems for dual claimed oyster leases.
- Oil companies avoid dual protective mineral leases.
- *Except for...*the State Mineral Board, which will no longer be able to lease “dual claimed” lands.

Questions?



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